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OFFICE OF PETITIONS

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| In re Application of | : | |
| Tim Forrester, Jorge Fabrega-Sanchez, and | : | |
| Gregory Poilasne | : | |
| Application No. 10/806,763 | : | DECISION ON PETITION UNDER |
| Filed: March 22, 2004 | : | 37 C.F.R. §1.47(A) |
| Attorney Docket No. UP1 00116 | : | |
| Title: SYSTEMS AND METHODS FOR | : | |
| CONTROLLING OUTPUT POWER IN A | : | |
| COMMUNICATION DEVICE | : | |

This is in response to the petition under 37 C.F.R. §1.47(a)¹, filed August 12, 2004.

It is noted that Petitioner is not listed as an attorney of record.

On March 22, 2004, the application was deposited without an executed declaration, identifying Tim Forrester, Jorge Fabrega-Sanchez, and Gregory Poilasne as joint inventors. On June 8, 2004, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted" (Notice), requiring an executed oath or declaration in compliance with 37 C.F.R. §1.63, as well as the surcharge associated with the late submission of the same. This Notice set a two-month period for reply.

¹A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application, as set forth in 37 CFR § 1.16(e);
- (3) a statement of the last known address of the non-signing inventors;
- (4) either
 - a) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review and proof that the non-signing inventor refuses to join in the application or
 - b) proof that the non-signing inventor cannot be found or reached after diligent effort;
- (5) a declaration which complies with 37 CFR §1.63.

With the instant petition, Petitioner has submitted the petition fee and surcharge, a declaration which has been executed by the latter two joint inventors, and a copy of a letter which was purportedly sent to the non-signing joint inventor.

Petitioner has met requirements (1) and (2) above.

Regarding the third requirement, petitioner has failed to include a statement of the last known address of the non-signing inventor².

Regarding the fourth requirement above, Petitioner has submitted a copy of a letter, with no accompanying statement which sets forth that the letter was ever sent to the non-signing inventor. This is not acceptable, as the statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made.

Regarding the fifth requirement, as the last known address has not been set forth, the Office cannot determine whether the submitted declaration is acceptable.

Therefore, the petition must be **DISMISSED**.

Any reply must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reply should include a cover letter entitled "Renewed Petition Under 37 C.F.R. §1.47(a)". This is not a final agency action within the meaning of 5 U.S.C 704.

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner.

To help assure prompt and proper attention to your response, please see Request for Alert Concerning Submitted Petitions, 1282 Official Gazette (May 18, 2004) for further information on how to assist the Office in delivering your submission to the correct location. The Petitioner may wish to consider telephoning the undersigned one month after the submission is made to confirm that the documents were properly delivered.

Any renewed petition may be submitted by mail³, hand-delivery⁴, or facsimile⁵.

The application file will be retained in the Office of Petitions for two (2) months.

² See MPEP 409.03(e).

³ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

⁴ Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.

⁵ (703) 872-9306 - please note this is a central facsimile number, and as such, there will be a delay in the delivery of the facsimile to the undersigned, which could be as much as one month.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (703) 305-0011. Please note that on approximately September 28, 2004, the Office of Petitions will relocate to the new PTO location in Alexandria. Although the mailing address will remain the same, the general phone number for the Office of Petitions which should be used for status requests will change to 571-272-3282, and the telephone number for the undersigned will change to 571-272-3225.



Paul Shanowski
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Office of Petitions
United States Patent and Trademark Office